

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EDWARD LORD and HELEN LORD	:	CIVIL ACTION
	:	
v.	:	
	:	
LIVING BRIDGES, et al.	:	NO. 97-6355

MEMORANDUM ORDER

On November 10, 1998, the court entered an order granting the motion of defendant Michelle Iatesta Towers to dismiss the complaint as to her for failure to effect proper service of process. While the court considered the motion on the merits, it noted that plaintiffs had not filed a response to the motion.

It appears that plaintiffs did submit a response captioned "reply certification." This document is dated after the time provided by L. R. Civ. P. 7.1(c) for any response to a motion and, moreover, was never filed with the Clerk or docketed. Nevertheless, now that this document has been identified, the court sua sponte reconsidered its decision of November 10th in light of the reply.

As noted in the court's memorandum order of November 10th, this action was originally filed in the District of New Jersey. Plaintiffs attempted to serve defendant Towers by handing process to someone in charge at the offices of defendant Living Bridges in Pennsylvania. Ms. Towers was an employee of

Living Bridges at the time of the events described in the complaint but not when service was attempted. She was not properly served pursuant to Fed. R. Civ. P. 4, New Jersey or Pennsylvania law. Judge Lifland granted a motion to quash service of process as to Ms. Towers, and transferred this action to this court pursuant to 28 U.S.C. § 1406(a).

Plaintiffs did not attempt to serve Ms. Towers for more than eight months after Judge Lifland's order. She was ultimately served at her home in Ardmore, Pennsylvania. The summons with which she was served, however, was issued by the Clerk of Court for the District of New Jersey, bore a date eight months earlier when the action was pending in that district and made no reference to the transfer of the case to this court.

Plaintiffs contend in their reply that Ms. Towers was not listed in the telephone book in 1997 and during preceding years, that directory assistance had no telephone listing for a Michelle Iatesta or Michelle Iatesta Towers in Ardmore and that she had attempted to avoid service. Plaintiffs, however, offer no explanation for why they waited eight months following Judge Lifland's order quashing service to engage an investigator to locate Ms. Towers. The investigator was able to discover defendant's home address within two hours. Plaintiffs have not remotely demonstrated good cause for their failure timely to effect service on Ms. Towers.

Dismissal of the action without prejudice as to Ms. Towers is therefore appropriate. See Petrucelli v. Bohringer and Ratzinger, GMBH, 46 F.3d 1298, 1305 (3d Cir. 1995); Suegart v. United States Customs Svc., 180 F.R.D. 276, 278-79 (E.D. Pa. 1998).

ACCORDINGLY, this day of November, 1998, upon reconsideration of defendants' Motion to Dismiss Pursuant to Rule 4, **IT IS HEREBY ORDERED** that the court's order of November 10, 1998 granting said Motion is reaffirmed.

BY THE COURT:

JAY C. WALDMAN, J.